

THE MUNICIPALITY OF ABUCAY, PLAINTIFF AND APPELLEE, VS. ABUCAY PLANTATION CO. AND B. A. GREEN, DEFENDANTS AND APPELLANTS.

G. R. No. 42802. February 08, 1937

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The municipality of Abucay, Province of Bataan, brought this action to compel the defendants to open to the public the country roads Gabon, Mabatang and Laon, situated within the said municipality; to remove the wire fences constructed by them, and to refrain in the future from closing the said roads to the public. Plaintiff alleged in its complaint that the said roads were for public use from time immemorial and that the defendants, claiming to be the owners thereof because included in their title to the plantation known as the "Abucay Plantation Company," illegally closed them to the public. The defendants in their answer only denied generally and specifically the material allegations of the complaint. Upon motion of the plaintiff, the court issued a preliminary injunction ordering the defendants to remove the fences or obstructions which they placed upon the roads, and enjoining them, until further order, from preventing and obstructing the public from using said roads. After the plaintiff had adduced its evidence at the trial, counsel for the defendants moved to dismiss the case upon the grounds that the plaintiff had not established its cause of action; that it had not been established that the municipal council of Abucay had authorized the municipal president, by ordinance or resolution, to represent the plaintiff in the case, wherefore, its standing in the case had not been proved, and that it had not been established likewise that the municipal council of Abucay had agreed to institute the action. The court denied the motion to dismiss, and at the same time decided the case declaring the Gabon, Mabatang and Laon roads open and destined for public use, and made the preliminary injunction permanent, with the costs to the defendants. The latter moved for a new trial, excepted to the order denying said motion, and, finally, presented the bill of exceptions which was approved by resolution of this court of October 23, 1934 in the mandamus case, G. R. No. 42535, between the same parties.

As to the facts, the plaintiff established that the three roads in question had existed during the Spanish regime and were always destined for the use of the public and considered as property of the municipality of Abucay, open for the common use and passage of the inhabitants of the town, although they were then only footpaths with no well-defined width that they have now, which is six (6) meters according to the cadastral plans. A portion of the Gabon road crosses the hacienda of the Abucay Plantation Company, and the latter's officers built a fence thereon and prevented its use by the public. In the partial decisions rendered in cadastral case No. 3 of Abucay on March 28, 1919 and February 2, 1922, the court held that the Gabon and Laon roads belonged to the municipality of Abucay, destined for common and public use, and ordered that the corresponding decrees be issued in favor of said municipal corporation. And in the partial decisions rendered on August 5, 1922, and July 21, 1927, in cadastral cases Nos. 7 and 9 of the same municipality, the court likewise held that all highways, roads, streets, and alleys found within the lands included in the cadastral plans, among them being the Mabatang road, were public property of the Government of the Philippine Islands. In the plan of the hacienda of the defendant corporation it

appears that the three roads aforesaid are excluded from the lands of the hacienda and are public roads destined for the common use of the inhabitants of the town of Abucay.

In support of the motion to dismiss, counsel for the defendants alleged that the plaintiff's action should be dismissed because it did not establish that the municipal council of Abucay had approved an ordinance or resolution authorizing the institution of the action and empowering the municipal president to represent it in, the case. We believe that the contention is without merit. The complaint shows that the one who instituted the action was the municipality of Abucay, not the municipal president. Section 2165 of the Revised Administrative Code authorizes municipalities to sue by instituting civil actions, and to be sued. In the absence of any evidence to the contrary, the presumption must be that the municipal council of Abucay, whose members represent the municipality under Article IX, Title IX, of the aforesaid Code, agreed by resolution or ordinance to bring the present action (sec. 334, No. 14, Code of Civil Procedure). As to the other point, we note that the municipal president did not represent either the municipality of Abucay or the municipal council in the case. The complaint only shows that the municipal president signed for the municipality of Abucay, plaintiff, after the latter's name was made to appear as plaintiff. In these circumstances it can not be held that the municipal president represented the municipality of Abucay or its municipal council in the case, and it must also be presumed that said official was actually authorized to sign the complaint for the plaintiff (sec. 334, No. 31, Code of Civil Procedure). We, therefore, reach the conclusion and so hold that the first assignment of error is untenable.

As has been said, the court did not immediately pass upon the motion to dismiss filed by counsel for the defendants, but denied the same in its decision and at the same time considered the case on its merits without waiting for the defendants to present their evidence. The latter contend that the court erred in not affording them an opportunity to present their evidence after denying their motion, and state in their brief that they filed said motion conditionally, that is, without prejudice to their right to adduce evidence should the motion to dismiss be denied. We have gone over the transcript of record and found that counsel for the defendants did not reserve such right but submitted the motion without any condition. The defendants insinuate that one of their attorneys made the reservation which does not appear in the transcript but which, in a conversation with the judge, the latter accepted as having been actually made. We cannot accept the contention upon this point because it does not appear in the record and the trial judge, in his decision, stated indirectly that the defendants did not reserve their right to adduce evidence. As between what appears of record and what does not appear therein and which is further denied by the other party, we choose to believe the former.

The motion to dismiss filed by counsel for the defendants during the trial and after the plaintiff had closed its evidence was in effect a demurrer to the sufficiency of plaintiff's evidence. In reality it was based upon the fact that the plaintiff had not established its standing or right to bring the action; hence, the defendants overlooked the ordinance or resolution to that effect enacted and approved by the municipal council of Abucay. It is a practice sanctioned by the jurisprudence in this jurisdiction to permit both in criminal and civil cases the presentation of motions to dismiss or demurrers to the evidence based upon the insufficiency of the evidence of the prosecution or of the plaintiff, and it has been invariably held that when the accused or the defendants do not reserve their right to adduce evidence, the courts may decide the case upon the evidence only thus submitted, and on appeal, should the evidence be sufficient to affirm the appealed decision, the case will not be remanded for a new trial to receive the evidence suppressed. (U. S. vs. Abaroa, 3 Phil., 116; U. S. vs. Romero, 22 Phil., 565; U. S. vs. De la Cruz, 28 Phil., 279; U. S. vs. Choa Chiok, 36 Phil., 831; Demeterio vs. Lopez, 50 Phil., 45; Moody, Aronson & Co. vs. Hotel Bilbao, 50 Phil., 198; Ortiz vs. Balgos, 54 Phil., 171.) The same rule applies in election cases, except that when the protestee reserves his right to adduce evidence, it is the duty of the court to overrule the motion to dismiss and to require him to introduce his evidence in support of his defenses or counterprotest, if any. (Demeterio vs. Lopez, supra.)

In the brief filed by counsel for the defendants, they cite the ruling in *Demeterio vs. Lopez*, supra, thus giving the impression that the said ruling favors their stand. A reading of the doctrine in said case reveals a confirmation of the rule that when a defendant in a civil case presents a motion to dismiss upon the ground of the insufficiency of plaintiff's evidence, without reserving his right to present his own evidence, should the motion to dismiss be overruled, he loses his right to adduce his evidence, and the court may decide the case upon its merits taking into account only the evidence for the plaintiff. The reason assigned for the doctrine thus established is, that in such cases it must be understood that the party filing the motion to dismiss without any reservation renounces its right to present evidence.

In the case of *Ortiz vs. Balgos*, supra, the doctrine has been reiterated and the cases wherein the doctrine has been uniformly laid down has been cited with approval. It will be seen from a reading of the decision that the different result reached therein was due to the fact that the motion or demurrer was not based upon the insufficiency of plaintiff's evidence, but upon the legal question raised that a necessary party defendant had not been included in the complaint.

Finding, therefore, that the defendants did not reserve their right to adduce their evidence, we hold that the second assignment of error is untenable.

The last assignment of error refers to the denial of the motion for new trial. In view of the conclusions heretofore reached, we hold that the motion for new trial was properly denied by the court and no error was thereby committed.

For the foregoing considerations, the appealed judgment is affirmed, with the costs of this instance to the defendants and appellants. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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